

STATE OF MICHIGAN
COURT OF APPEALS

DAWANA A. RODRIGUEZ,

Plaintiff-Appellee,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellant.

UNPUBLISHED

January 24, 2012

No. 301446

Court of Claims

LC No. 09-000085-MZ

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Plaintiff filed two claims for damages arising out of a motor vehicle accident with a police vehicle. In the Genesee Circuit Court, plaintiff filed suit against Michigan State Police Trooper Jasen Sack, the driver of the police vehicle involved in the accident.¹ In the Court of Claims, plaintiff filed suit against the Michigan State Police and the State of Michigan. On order of Court of Claims Judge Joyce Draganchuk, the cases were joined. All defendants moved for summary disposition, and on September 28, 2010, Saginaw Circuit Court Judge Janet M. Boes granted summary disposition to Sack on the ground that the facts did not establish that he acted with gross negligence, but denied summary disposition to defendant Department of State Police (hereinafter referred to as “defendant”). Defendant appeals as of right, and we affirm.

On August 24, 2008, sometime after midnight, plaintiff and Sack collided at the intersection of Dixie Highway and Hess Road in Saginaw. Plaintiff had just turned onto Dixie and was heading north in the right lane, while Sack was heading west on Hess. Sack made a complete stop at the intersection because it had a flashing red signal light. Once he stopped, a vehicle entered the center turn lane to his left and obstructed his view of traffic traveling north on Dixie. Sack proceeded to move his vehicle forward slowly to obtain a clearer view. At that point, the other vehicle moved further ahead, so Sack moved his vehicle forward a second time. The front of his vehicle was now in the intersection, in the right lane of traffic on Dixie. Plaintiff was at that moment proceeding through the intersection and collided with Sack’s vehicle. There were no visible injuries to those involved, and emergency personnel were not called to the scene.

¹ The circuit court case was transferred by stipulation to the Saginaw Circuit Court.

Plaintiff claims to have suffered from hip and back pain after the accident. She stated that she was unable to work for a month and, as a result, lost her job. She has also complained of memory loss, sleep problems, and depression. Plaintiff alleges that she has incurred some out-of-pocket medical expenses, such as prescription costs and insurance deductibles, which she estimates to be \$10,000. On appeal, defendant argues that summary disposition should have been granted to it pursuant to governmental immunity.

We review de novo a trial court's decision regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). If a motion is based on governmental immunity, the parties may provide supporting evidence, including affidavits, depositions, and admissions. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If the parties submit documentary evidence, we must review it in determining whether the nonmoving party established an exception to governmental immunity. See *id.* As stated in *Marilyn Froling Revocable Living Trust*, 283 Mich App 264, 278; 769 NW2d 234 (2009): "the plaintiff's well-pleaded factual allegations, affidavits, or other admissible documentary evidence must be accepted as true and construed in the plaintiff's favor, unless the movant contradicts such evidence with documentation."

MCL 691.1407(2) provides:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

MCL 691.1405, however, provides that "[g]overnmental agencies shall be liable for bodily injury and property damages resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner"

MCL 257.614(1)(a) states that when there is red flashing light, "drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign."

MCL 257.649(6) provides, in part:

[T]he driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is not a crosswalk shall stop at a clearly marked stop line; or if there is not a crosswalk or a clearly marked stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway. After having stopped, the driver shall yield the right of way to a vehicle which has entered the intersection from another highway or which is approaching so closely on the highway as to constitute an immediate hazard during the time when the driver would be moving across or within the intersection.

The Michigan Supreme Court has rendered various decisions interpreting the duty a driver owes when approaching intersections. “[I]t is a general rule that a person entering an intersection must exercise that degree of care and caution that an ordinarily prudent and careful driver would exercise under the same or similar circumstances.” *Stabler v Copeland*, 304 Mich 1, 7; 7 NW2d 122 (1942). Moreover, a driver’s right-of-way is not an absolute right. *Rathburn v Riedel*, 291 Mich 652, 655; 289 NW 285 (1939); see also *Sattiewhite v de la Cuadra*, 31 Mich App 117, 119; 187 NW2d 553 (1971). Even if a driver has the right-of-way, the driver must still make observations and use caution by keeping his vehicle under reasonable control to avoid accidents at intersections. *McGuire v Rabaut*, 354 Mich 230, 237; 92 NW2d 299 (1958); *Kowalski v Malone*, 326 Mich 254, 258-260; 40 NW2d 143 (1949); see also *Sattiewhite*, 31 Mich App at 119-120.

There is no question that Sack had a duty to yield to the traffic on Dixie—he even admitted that in his testimony. However, there is an issue regarding whether he breached his duty by not acting as a reasonably prudent and careful driver would.² At the time of the accident, Sack testified, he was on his way to the police post and was looking for violations along the way. He stated that he was going to stop a vehicle he had seen earlier, but also seemed to indicate that it was not an emergency; he did not have his lights and sirens on. There appeared to be no pressing need to proceed through the intersection. Sack could not give a reason why he simply did not wait for the vehicle that was obstructing his view to move. He stated that it was a quick decision and that he did not think about it at the time.

Sack had a duty to yield and knew this, yet he intentionally inched his vehicle forward, with the front of his vehicle ending up in the intersection and in front of oncoming traffic. Sack stated that because he approached the intersection first, he had the right-of-way and the driver who approached from his left and blocked his view was in the wrong. As noted, however, the right-of-way is not an absolute right, and it will not shield drivers from their responsibility to act

² In *Arias v Talon Dev Group, Inc.*, 239 Mich App 265, 268; 608 NW2d 484 (2000), this Court stated: “Once the existence of a duty toward the plaintiff is established, the reasonableness of the defendant’s conduct is a question for the jury.”

as a reasonably prudent and careful driver would. The evidence is unclear regarding whether plaintiff and Sack saw each other. Yet even if he never saw plaintiff's vehicle, there is an issue regarding whether it was reasonable for Sack to place his vehicle further into the intersection without knowing for sure if another vehicle was approaching.

Viewing all this evidence under the standard for motions brought pursuant to MCR 2.116(C)(7), there is a genuine issue regarding whether Sack was negligently operating his vehicle when he pulled into the intersection.

Defendant also argues that the court erred in considering the existence of a threshold injury and conflating this issue with the issue of governmental immunity. Although the court did address the issue of a threshold injury, it did so because defendant raised the issue in its brief in support of summary disposition. The court stated the following in its order denying relief from its earlier order:

The statements in the Court's [earlier] ruling to the effect that Trooper Sack proceeded "cautiously" into the intersection, "at a low rate of speed"[.] that he "acted as any reasonable person would in the situation", and that he "inched forward, slowly" are properly understood as conclusions that a reasonable factfinder might reach on the evidence, but would not be compelled to reach. [Emphasis in original].

Essentially, the court clarified that, by way of its earlier ruling, it had concluded that Sack had not acted in a grossly negligent fashion but that there were questions of fact remaining concerning ordinary negligence. Given this clarified understanding, the court did not err in addressing the question raised by defendant regarding establishing the requisite threshold injury under the no-fault act.³

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

³ MCL 500.3101 *et seq.* We note that defendant states in its brief that it "is not asking this Court to reconsider the Trial Court's conclusion that Plaintiff has demonstrated a question of fact concerning whether she suffered a serious impairment of a body function."